

THURMAN BANKS, ET AL.

IBLA 76-15, 76-17, 76-18

Decided October 15, 1975

Appeals from decisions by the Oregon State Office, Bureau of Land Management, rejecting applications for Indian allotments.

Appeal dismissed; decisions affirmed.

1. Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Statement of Reasons

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons in support of the appeal within the time permitted by Departmental regulation.

2. Act of February 8, 1887 -- Indian Allotments on Public Domain: Lands Subject to -- Withdrawals and Reservations: Generally

Section 4 of the General Allotment Act of February 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated * * *." Pending final action on the matter, public lands are not open to Indian allotment settlement and disposition following the filing and noting of an application by the Bureau of Land Management for a proposed withdrawal; regulation 43 CFR 2091.2-5(a) provides that the noting of an application for withdrawal on the official plats maintained in the proper land office shall temporarily segregate the subject land from settlement under the

public land laws to the extent that the withdrawal applied for, if effected, would prevent such forms of disposal. Following issuance of a public land order withdrawing the subject land, Indian allotment applications previously held in a suspense status are properly rejected.

APPEARANCES: Thurman Banks, Elizabeth V. Muno, Ruby E. Paul, Pamela K. Propp, Darlene G. Ahmad, Darrell R. Paul, each pro se; Augustus Russell, pro se and for Sylvester E. Russell, James Russell, Beverly Thompson, Rex Russell and Gwendolyn Russell.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Appellants 1/ have appealed from separate decisions of the Oregon State Office, Bureau of Land Management (BLM), rejecting their applications for Indian allotments applied for pursuant to section 4 of the General Allotment Act of February 8, 1887, 25 U.S.C. § 334 (1970). This section provides in pertinent part that:

Where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, Act of Congress, or Executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same

<u>1/ 75-15</u>	<u>Application Number</u>
Thurman Banks	OR 3707
<u>75-17</u>	
Sylvester E. Russell	OR 75
James Russell	OR 76
Augustus Russell	OR 018339
Beverly (Russell) Thompson	OR 018340
Rex Russell	OR 018341
Gwendolyn Russell, (deceased December 6, 1973)	OR 018342
<u>75-18</u>	
Elizabeth V. Muno	OR 018504
Ruby E. Paul	OR 018552
Pamela K. Propp	OR 018553
Darlene G. Ahmad	OR 018654
Darrell R. Paul	OR 018655

allotted to him or her, and to his or her children, in quantities and manner as provided in * * * [other sections of the Act].

All of the appellants, with the exception of Thurman Banks, filed their allotment applications in 1966 for lands in Tillamook and Lincoln Counties, Oregon. Thurman Banks filed his allotment application in 1968 for lands in Lane County, Oregon. None of the appellants had initiated settlement of the lands at the time of filing their applications. 2/

On July 10, 1962, the BLM filed application Oregon 012693 to withdraw certain lands, including those described in appellants' allotment applications, from various forms of appropriation including Indian allotment disposition. The BLM proposed to reserve the land for multiple use management, particularly sustained yield of forest resources in connection with intermingled revested Oregon and California Railroad Grant Lands and reconveyed Coos Bay Wagon Road Grant Lands. The proposed withdrawal was noted on the land office records on July 17, 1962. By decisions issued in 1966 and 1968 (Thurman Banks), appellants were informed of the proposed withdrawal, and pursuant to 43 CFR 2091.2-5(a), their applications were suspended pending final action on the withdrawal application.

By Public Land Order 5490 (Oregon 012693), 40 F.R. 7450 (February 20, 1975), the Department reserved the subject lands for multiple use management and withdrew them from certain forms of appropriation including Indian allotment disposition. Thereafter, the Oregon State Office, BLM, issued decisions rejecting appellants' Indian allotment applications.

[1] Appellant Thurman Banks timely filed a notice of appeal from the decision rejecting his allotment application stating:

Notice is hereby given that Thurman Banks: Applicant for Indian Allotment OR3703 will appeal Public Land Decision dated May 29, 1975 as mailed Certified 9404.

2/ Since these lands had been withdrawn pursuant to Executive Order 6910 of November 20, 1934, they were not open to settlement until they had been classified and opened to entry pursuant to Section 7 of the Taylor Grazing Act, 43 U.S.C. § 315(f) (1970). Alexander Bateman, A! 27023 (1955). No such action had been taken.

By letter dated July 1, 1975, the BLM acknowledged receipt of Banks' notice of appeal and reminded him that he had to file a statement of reasons with this Board within 30 days following the filing of the notice of appeal. 43 CFR 4.412. No such statement has been filed by Banks and no reason has been given for the omission. Accordingly, his appeal is subject to summary dismissal. 43 CFR 4.402(a).

The remaining appellants, in their statements of reasons on appeal, each argue that at the time they filed their allotment applications the lands had not been withdrawn and the "proposed withdrawal" status should not have affected their rights to acquire the subject lands. They add that Public Land Order 5490 does not apply to them as it was issued after they filed their allotment applications.

[2] Section 4 of the General Allotment Act of February 8, 1887, supra, authorizes the Secretary of the Interior to issue allotments to Indians, in certain instances, where the Indians have made settlement 3/ upon public lands "not otherwise appropriated * * *." In the present case, the subject lands were "appropriated" at the time of the filing of the applications based upon the BLM's proposed withdrawal. Regulation 43 CFR 2091.2-5(a) provides that the noting of an application for withdrawal on the official plats maintained in the proper land office shall temporarily segregate such land from settlement under the public land laws to the extent that the withdrawal applied for, if effected, would prevent such forms of disposal. See also 43 CFR 2351.3(a); Kelly B. Hall, et al., 4 IBLA 329, 330 (1972); cf. Benjamin F. Sanderson, Sr., 16 IBLA 229, 233 (1974). Accordingly, all lands described in Oregon 012693 were withdrawn from settlement and disposition under the General Allotment Act effective from the date of posting of the application on the land office records. As this date of notation was antecedent to the dates appellants filed their applications (at which time no settlement had been initiated), the lands were not open to settlement and disposal for Indian allotments and the applications were properly suspended pending final action on the application for withdrawal. 43 CFR 2091.2-5(a). Following issuance of Public Land Order 5490, the suspense status of appellants' applications terminated and the applications were properly rejected due to the withdrawn character of the subject lands.

3/ See footnote 2.

Appellants urge that this result has deprived them of their rights under the General Allotment Act. We point out that an Indian applicant is not denied his right to an allotment when his application is rejected as in this instance. The applicant is merely required to apply for other land that is not "otherwise appropriated." Curtis D. Peters, 13 IBLA 4, 9 (1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal of Thurman Banks is dismissed and the remaining decisions appealed from are affirmed.

Martin Ritvo
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

